

### **REMARKS**

Favorable reconsideration is respectfully requested in view of the above amendments and the following remarks. Following the amendments, claims 11, 12, 14-16 and 20-32 are pending in the application, with claims 11 and 27 being in independent format.

Claims 13 and 17-19 have been cancelled from the application and claims 27-32 have been added. Claim 11 has been amended to include the subject matter of cancelled claim 13, and claim 12 has been amended to remove the phrase “beaker-like housing”. Claim 19 has been rewritten as newly added independent claim 27, and claim 20 has been amended to depend from claim 27. Newly added claims 28-32, which depend from claim 27, recite the limitations of claims 14-16, 23 and 24, respectfully.

It is urged that support for all the above amendments can be found throughout the application as originally filed and that none of the amendments constitute new matter or raise new issues for consideration.

### **Objections to the Drawings**

The drawings were objected to under 37 CFR §1.83(a) as not showing the subject matter of claims 17 and 18. As noted above, claims 17 and 18 have been canceled from the application. It is therefore submitted that this objection may be properly withdrawn.

### **Objections to the Specification**

In response to the Examiner’s objection to the abstract as including the term “comprising”, a corrected abstract is submitted herewith.

### **Claim rejections under 35 USC §112, second paragraph**

Claims 12, 13 and 19-26 stand rejected under 35 USC §112, second paragraph, as being indefinite. Specifically, the Examiner has objected to the terms “beaker-like” in claim 12, “the base of housing upper part” in claim 13, and “may be” in claim 19. In addition, the Examiner states that claims 19 and 20 are indefinite as it is unclear as to whether the claims recite the combination of a crusher and a shaker, or a crusher only.

As discussed above, the claim 12 and 13 have been amended to remove the language objected to by the Examiner and claim 19 has been rewritten as independent claim 27. It is submitted that, following entry of the above amendments, one of skill in the art would clearly be able to determine the metes and bounds of all the pending claims and that the rejection under 35 USC §112, second paragraph, may thus be properly withdrawn.

**Claim rejections under 35 USC §102(b)**

Claims 11-13 and 19-22 stand rejected under 35 USC §102(b) as being anticipated by US Patent 2,484,391 to Treiss Jr. This rejection is respectfully traversed.

Specifically, the Examiner asserts that Treiss Jr. teaches a hand-operated crusher for cutting up ice comprising a housing having an upper part and a lower part, a vertical rod, a spring, an actuating mechanism having a push button, and a knife, wherein the cutter at its lowermost position, does not contact the base of the housing lower part. Applicant respectfully notes that the figure referred to in the Examiner's discussion of Treiss is not from the Triess reference but is in fact from the Michel reference discussed below.

Following the above amendments, independent claims 11 and 27 are drawn to an ice crusher comprising a housing having a lower part and an upper part, a vertical rod guided in the housing upper part and being downwardly displaceable against the force of a spring by means of an actuating mechanism, and a knife attached to the lower end of the vertical rod and provided with a toothed cutter, wherein the cutter, at its lowermost position, does not contact the base of the housing lower part.

Triess discloses a combined liquid dispenser and ice crusher including a two-bladed chopper 25. At col. 3, lines 16-18 of Triess, it is clearly stated that "the blades 25 are normally disposed about ½" above the bottom of the glass". It is respectfully submitted that Fig. 1 of Triess does not show the blades at their lowermost position, but rather shows the blades prior to actuation by pressing on knob or handle 26. Applicant has been unable to find any teaching in Triess of a cutter that does not contact the base of container 11 when at its lowermost position, and is unable to discern any mechanism in the ice crusher of Triess that would prevent blades 25 from touching the base of container 11 when actuated by handle 26. In addition, Triess does not teach a blade having a toothed cutter as recited in claim 1.

It is therefore submitted that Triess Jr. does not teach or suggest the presently claimed invention and that this rejection of claims 11-13 and 19-22 under 35 USC §102(b) may be properly withdrawn.

Claims 11-13 and 19-22 stand rejected under 35 USC §102(b) as being anticipated by US 2001/0028007 to Michel. This rejection is respectfully traversed.

The Examiner asserts that Michel discloses a hand-operated crusher comprising a housing having an upper part and a lower part, a vertical rod, a spring, an actuating mechanism having a push button, and a knife wherein the cutter at its lowermost position does not contact the base of the housing lower part. In support of her position, the Examiner has indicated by  $d_1$  the maximum vertical distance through which the knife can move and states that  $d_1$  is less than the distance  $d_2$  between the lower edge of knife 19 and the base of the housing lower part when the knife is in its uppermost position. However, applicant respectfully submits that the correct maximum vertical movement of knife 19 (shown as  $d_3$  on the attached Exhibit A) is in fact greater than  $d_2$ , and therefore the knife 19 of Michel would contact the base of the housing lower part.

It is further submitted that the housing lower part of Michel's device is not closed, as recited in claims 12 and 27 but, as taught in paragraph 0030 of Michel, is open and is placed on a chopping plate 22. In addition, applicant notes that the knife 19 of Michel is not provided with a toothed cutter, as recited in claims 11 and 27, but is "shaped in a wave manner" (paragraph 0029).

It is thus urged that Michel neither teaches nor suggests the presently claimed invention and that this rejection of claims 11-13 and 19-22 under 35 USC §102(b) may thus be properly withdrawn.

#### **Claim rejections under 35 USC §103**

Claims 14-18 stand rejected under 35 USC §103(a) as being unpatentable over Triess or Michel. This rejection is respectfully traversed.

The Examiner asserts that the limitations of claims 14-18 would have been an obvious design choice, solve no stated problem and are therefore of no patentable merit. Applicant is

unaware of any requirement that claim limitations must solve a stated problem in order to be patentable.

As discussed above, neither Treiss nor Michel teach or suggest several features recited in independent claim 11, from which claims 14-16 depend. It is submitted that neither Triess nor Michel, taken either alone or in combination, would have rendered the subject matter of claims 14-16 obvious to one of skill in the art, and that these rejections of the claims may thus be properly withdrawn.

Claims 23-26 stand rejected under 35 USC §103(a) as being unpatentable over either Triess or Michel in view of US Patent 4,417,512 to Engelke. This rejection is respectfully traversed.

Engelke discloses a can crushing device. The Examiner asserts that both Treiss and Michel disclose "most of the elements of these claims but for the specific underlay" and that Engelke teaches "providing a crusher with anti-slip elastomer pad." Engelke does not overcome the deficiencies of Triess and Michel discussed above.

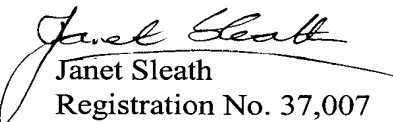
Applicant submits that neither Triess, Michel nor Engelke, taken either alone or in combination, would have rendered the subject matter of claims 23-26 obvious to one of skill in the art, and that these rejections of claim 23-26 under 35 USC §103(a) may thus be properly withdrawn.

#### **Concluding Remarks**

Every effort has been made to put the pending claims in condition for allowance. Favorable reconsideration and early allowance of all the pending claims is respectfully requested.

Should the Examiner have any further concerns regarding this application, she is requested to telephone the undersigned at 206.382.1191.

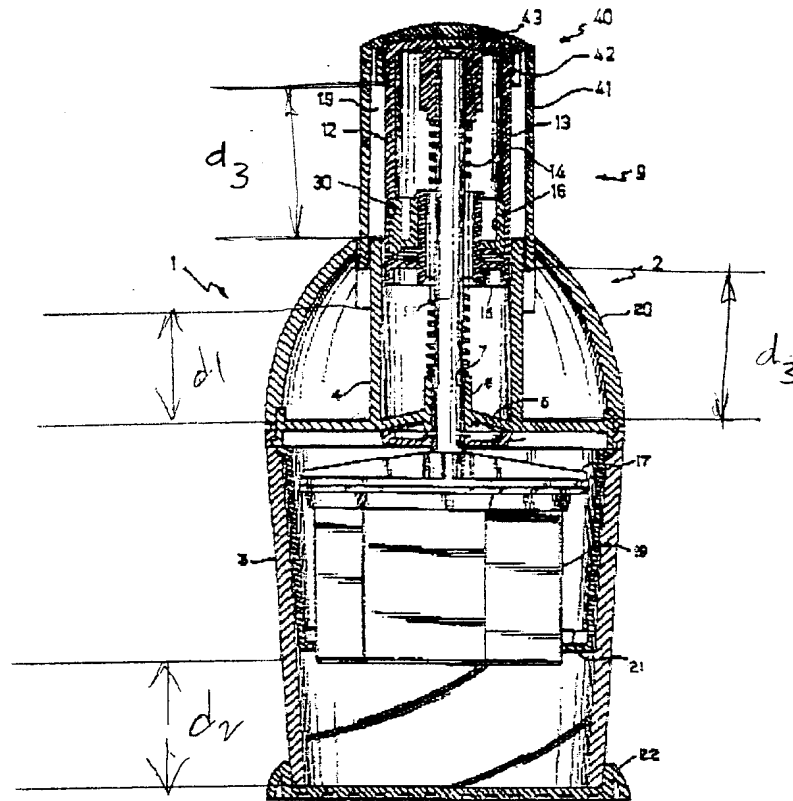
Respectfully submitted,

  
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### Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Treiss.

## EXHIBIT A